

TRANSMITTAL OF APPEAL BRIEF		Docket No. 66729/P034US/10614706
In re Application of: Roy Schoenberg	Filing Date April 15, 2004	Examiner K. K. Rapillo
Application No. 10/824,705-Conf. #6791	Group Art Unit 3626	
Invention: AUTOMATED DATA ENTRY METHOD AND SYSTEM		

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: November 18, 2009.

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Appeal Brief

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Docket No.: 66729/P034US/10614706
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Roy Schoenberg

Application No.: 10/824,705

Filed: April 15, 2004

Confirmation No.: 6791

Art Unit: 3626

For: AUTOMATED DATA ENTRY METHOD AND
SYSTEM

Examiner: K. K. Rapillo

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under 37 C.F.R. § 41.37(a), this brief is filed within two months of the Notice of Appeal filed November 18, 2009, and is in furtherance of said Notice of Appeal.

The fees required under 37 C.F.R. § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims Appendix
- IX. Evidence Appendix
- X. Related Proceedings Appendix

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

The TriZetto Group, Inc.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 38 claims pending in application, numbered Claims 1, 2, 4-21, and 24-41 are pending in the present application..

B. Current Status of Claims

1. Claims canceled: 3, 22, and 23
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1, 2, 4-21, and 24-41
4. Claims allowed: None
5. Claims rejected: 1, 2, 4-21, and 24-41

C. Claims On Appeal

The claims on appeal are claims 1, 2, 4-21, and 24-41.

IV. STATUS OF AMENDMENTS

A Final Office Action was mailed April 15, 2009, which finally rejected claims 1, 2, 4-21, and 24-41 as being unpatentable over *Ross* (U.S. Patent No. 7,076,436) in view of *Wheeler* (U.S. Patent Application Publication No. 2003/0097573). The rejections were maintained in an Advisory Action dated July 10, 2009. In response, Applicant filed a notice of appeal with an accompanying Pre-Appeal Brief Request for Review (on July 24, 2009). A Notice of Panel Decision was then mailed August 10, 2009, which indicated that prosecution would be reopened.

Then, a new Office Action, dated October 26, 2009, rejected the claims as being unpatentable over *Ross* in view of *Wheeler* and a newly-applied reference, *Puchek* (U.S. Patent Application Publication No. 2003/0091158). In response, Applicant conducted an Examiner interview (on November 12, 2009) in which Applicant argued that the applied combination of references still failed to teach or suggest all limitations of the claims. No agreement was reached, and thus Applicant filed another notice of appeal to reinstate the appeal, with another accompanying Pre-Appeal Brief Request for Review (on November 18, 2009). A Notice of Panel Decision dated December 18, 2009 that at least one issue remains for appeal.

Accordingly, this brief is submitted in support of the notice of appeal filed November 18, 2009. Because no claim amendments have been presented after the Final Office Action of April 15, 2009, the claims on appeal are those as rejected in that Final Office Action, which were subsequently rejected in the Office Action of October 26, 2009 (hereafter “the Office Action”) that raised the rejections that are the subject of the present appeal. A complete listing of the claims is provided in the Claims Appendix hereto.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following provides a concise explanation of the subject matter defined in each of the separately argued claims involved in the appeal, referring to the specification by page and line number and to the drawings by reference characters, as required by 37 C.F.R. § 41.37(c)(1)(v). Each element of the claims is identified by a corresponding reference to the specification and drawings where applicable. It should be noted that the citation to passages in the specification and drawings for each claim element does not imply that the limitations from the specification and drawings should be read into the corresponding claim element.

According to one claimed embodiment, such as that of independent claim 1, a data entry method comprises: in a computer-based medical record (see e.g., medical records 60, 62, 64 of Fig. 2) including a plurality of data fields (see e.g., data fields of medical record 62 in Fig. 7), defining one or more data fields for which desired field data is to be acquired (see e.g., operational block 146 of Fig. 5), see e.g., page 2, lines 1-5 and page 9, lines 19-25 of the specification. The method further comprises automatically populating at least one of the one or more data fields with desired field data from a data source, see e.g., page 2, line 1 – page 3, line 4, page 9, line 26 – page 10, line 3, and page 10, line 14 – page 11, line 3 of the specification. The automatically populating comprises: receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer (see e.g., computer 26 of Fig. 1), a schedule for contacting said data source to prompt said data source for the desired field data for said at least one data field (see e.g., page 10, lines 4-24 of the specification); triggering, by said computer-based application, contacting said data source in possession of the desired field data in accordance with said schedule (see e.g., operational blocks 150, 154 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification); and receiving, by said computer-based application, the desired field data from the data source (see e.g., operational block 176 of Fig. 5, and page 11, line 28 – page 12, line 8 of the specification).

In certain embodiments, such as that of dependent claim 2, the method further comprises updating, by said computer-based application, the computer-based medical record to include the

received desired field data, see e.g., operational block 178 of Fig. 5 and page 11, line 28 – page 12, line 8 of the specification.

In certain embodiments, such as that of dependent claim 9, the contacting of a data source includes: transmitting an email to the data source, see e.g., operational block 150 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification.

In certain embodiments, such as that of dependent claim 10, the contacting of a data source further includes providing the data source with text-based instructions concerning the desired field data, see e.g., operational block 152 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification.

According to another claimed embodiment, such as that of independent claim 14, a data entry method comprises: in a computer-based medical record (see e.g., medical records 60, 62, 64 of Fig. 2) including a plurality of data fields (see e.g., data fields of medical record 62 in Fig. 7), defining one or more data fields for which desired field data is to be acquired (see e.g., operational block 146 of Fig. 5), wherein the medical record defines at least a portion of the medical history of a patient, see e.g., page 2, lines 1-5 and page 9, lines 19-25 of the specification. The method further comprises automatically populating at least one of the one or more data fields with desired field data from the patient, see e.g., page 2, line 1 – page 3, line 4, page 9, line 26 – page 10, line 3, and page 10, line 14 – page 11, line 3 of the specification. The automatically populating comprises: receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer (see e.g., computer 26 of Fig. 1), a schedule for contacting said patient to prompt said patient for the desired field data for said at least one data field (see e.g., page 10, lines 4-24 of the specification); triggering, by said computer-based application, telephonically contacting the patient (see e.g., operational block 154 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification); receiving, by said computer-based application, the desired field data from the patient (see e.g., operational block 176 of Fig. 5, and page 11, line 28 – page 12, line 8 of the specification); and updating, by said computer-based application, the computer-based medical record to include the received desired

field data, see e.g., operational block 178 of Fig. 5 and page 11, line 28 – page 12, line 8 of the specification.

According to another claimed embodiment, such as that of independent claim 20, a computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor (see e.g., computer 26 of Fig. 1), cause that processor to: in a computer-based medical record (see e.g., medical records 60, 62, 64 of Fig. 2) including a plurality of data fields (see e.g., data fields of medical record 62 in Fig. 7), define one or more data fields for which desired field data is to be acquired (see e.g., operational block 146 of Fig. 5), wherein the medical record defines at least a portion of the medical history of a patient, see e.g., page 2, lines 1-5 and page 9, lines 19-25 of the specification; schedule one or more times for contacting a data source to prompt said data source for the desired field data for said at least one data field (see e.g., page 10, lines 4-24 of the specification); contact, in accordance with the schedule, said data source in possession of the desired field data (see e.g., operational blocks 150, 154 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification); and receive the desired field data from the data source (see e.g., operational block 176 of Fig. 5, and page 11, line 28 – page 12, line 8 of the specification).

In certain embodiments, such as that of dependent claim 21, the program further comprises instructions for updating the computer-based data record to include the desired field data, see e.g., operational block 178 of Fig. 5 and page 11, line 28 – page 12, line 8 of the specification.

In certain embodiments, such as that of dependent claim 28, the instructions for contacting a data source include instructions for: transmitting an email to the data source, see e.g., operational block 150 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification.

In certain embodiments, such as that of dependent claim 29, the instructions for contacting a data source further include instructions for: providing the data source with text-based instructions concerning the desired field data, see e.g., operational block 152 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification.

According to another claimed embodiment, such as that of independent claim 33, a computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor (see e.g., computer 26 of Fig. 1), cause that processor to: in a computer-based medical record (see e.g., medical records 60, 62, 64 of Fig. 2) including a plurality of data fields (see e.g., data fields of medical record 62 in Fig. 7), define one or more data fields for which desired field data is to be acquired (see e.g., operational block 146 of Fig. 5), wherein the medical record defines at least a portion of the medical history of a patient, see e.g., page 2, lines 1-5 and page 9, lines 19-25 of the specification. The instructions further cause the processor to, in accordance with a defined contact schedule (see e.g., page 10, lines 4-24 of the specification), autonomously telephonically contact the patient for requesting the desired field data from the patient (see e.g., operational block 154 of Fig. 5 and page 10, line 25 – page 11, line 3 of the specification); receive the desired field data from the patient (see e.g., operational block 176 of Fig. 5, and page 11, line 28 – page 12, line 8 of the specification); and update the computer-based medical record to include the desired field data, see e.g., operational block 178 of Fig. 5 and page 11, line 28 – page 12, line 8 of the specification.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 2, 4-21, and 24-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,076,436 to Ross (hereafter “*Ross*”) in view of U.S. Patent Application Publication No. 2003/0097573 to Wheeler (hereafter “*Wheeler*”) and further in view of U.S. Patent Application Publication No. 2003/0091158 to Puchek (hereafter “*Puchek*”).

VII. ARGUMENT

Appellant respectfully traverses the outstanding rejections of the pending claims, and requests that the Board reverse the outstanding rejections in light of the remarks contained herein. The claims do not stand or fall together. Instead, Appellant presents separate arguments for various independent and dependent claims. Each of these arguments is separately argued below and presented with separate headings and sub-headings as required by 37 C.F.R. § 41.37(c)(1)(vii).

A. Rejections Under 35 U.S.C. §103 Over *Ross* in view of *Wheeler* and *Puchek*

Claims 1, 2, 4-21, and 24-41 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ross* in view of *Wheeler* and further in view of *Puchek*. Appellant respectfully traverses these rejections for the reasons discussed hereafter.

The test for non-obvious subject matter is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a person having ordinary skill in the art to which the subject matter pertains. The United States Supreme Court in *Graham v. John Deere and Co.*, 383 U.S. 1 (1966) set forth the factual inquiries which must be considered in applying the statutory test: (1) determining of the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art. As discussed further hereafter, Appellant respectfully asserts that the claims include non-obvious differences over the cited art.

As discussed further below, the rejections should be overturned because when considering the scope and content of the applied combination of the *Ross*, *Wheeler*, and *Puchek* references there are significant differences between the combination and claims. Thus, considering the lack of any disclosure or suggestion in the applied combination of all limitations of claims 1, 2, 4-21, and 24-41, one of ordinary skill in the art would not find these claims obvious under 35 U.S.C. §103, and therefore the rejections should be withdrawn.

Independent Claim 1 and Dependent Claims 4-8, 11-13, and 39

Independent claim 1 recites:

A data entry method comprising:
in a computer-based medical record including a plurality of data fields, defining one or more data fields for which desired field data is to be acquired; and automatically populating at least one of the one or more data fields with desired field data from a data source, said automatically populating comprising:
receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer, a schedule for contacting said data source to prompt said data source for the desired field data for said at least one data field;
triggering, by said computer-based application, contacting said data source in possession of the desired field data in accordance with said schedule; and
receiving, by said computer-based application, the desired field data from the data source. (Emphasis added).

The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest at least the above-emphasized limitations. The applied combination does not teach or suggest at least:

- Automatically populating at least one data field of a computer-based medical record (indeed, *Ross* expressly teaches a user manually populating fields of a medical record).
- Receiving by a computer-based application a schedule for contacting a data source, and triggering by the computer-based application contacting of a data source in possession of desired field data in accordance with the schedule.

Automatically populating at least one data field of a computer-based medical record

Ross permits manual entry of data into medical records, and does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule, as recited by claim 1.

The Office Action appears to contend (at page 3 thereof) that *Wheeler* discloses this limitation, citing to paragraphs 0130 and 0299 of *Wheeler*. *Wheeler* is directed generally to communicating electronically regarding accounts, and addresses various uses of public and private keys, etc. for achieving secured communication. In particular, *Wheeler* describes embodiments of an Account-Based Digital Signature (ABDS) system for secure access by a patient to the patient's medical records. *Wheeler* discloses that its ABDS system may be implemented in a vast number of wide-ranging business applications, *see* paragraphs 0175-0176 of *Wheeler*.

Wheeler then proceeds to describe various implementations of its 2-Party ABDS system in various separate and distinct business applications (under corresponding headings), such as Financial Institution Account (paragraphs 0180-0191), Brokerage Account (paragraphs 0192-0201), Bill Payment Services Account (paragraphs 0202-0214), Credit Bureau Account (paragraphs 0215-0224), Patient/Personal Medical Records Account (paragraphs 0225-0234), Medical Practice Management Account (paragraphs 0235-0245), Government Benefits Account (paragraphs 0246-0255), Internet Service Provider (paragraphs 0256-0263), Employee Database Authorization Account (paragraphs 0264-0271), Secure Area Authorization Account (paragraphs 0272-0280), Electronic Data Interchange with Multiple Purchasing Agents (paragraphs 0281-0291). *Wheeler* also describes various implementations of its 3-Party ABDS system (*see* paragraphs 0292-0293) in various separate and distinct business applications (under corresponding headings), such as eBusiness Transaction Using Financial Institution Account (paragraphs 0294-0305), Digital Gift Check Using Financial Institution Account (paragraphs 0306-0316), Point of Sale Transaction Using Financial Institution Account (paragraphs 0317-0327).

Paragraph 0130 of *Wheeler* (to which the Office Action cites) expressly describes with reference to block 414 of its figure 4a that additional information is obtained from a prospective

account holder. This cited paragraph of *Wheeler* does not provide any teaching or suggestion of automatically populating any data field(s).

Paragraph 0299 of *Wheeler* (to which the Office Action cites) does not describe the scenario in which a patient is accessing medical records, but is instead describing a completely different business application labeled under the heading “eBusiness Transaction Using Financial Institution Account” (see paragraph 0294 of *Wheeler*). As noted in paragraphs 0175-0176 of *Wheeler*, it describes various distinct “business applications” for its ABDS, and while it describes an application to medical records (in paragraphs 0225-0234), the example described in paragraph 0299 concerns a completely separate and distinct application of the ABDS to an “eBusiness Transaction”. Paragraph 0299 of *Wheeler* mentions that in such an eBusiness Transaction scenario cookies may be used for automatically filling in certain fields of a web site display that is used in an ordering process for ordering a product or service from the website.

However, the scenario described in paragraph 0299 of *Wheeler* simply makes no mention of and appears to have no applicability whatsoever to medical records. *Wheeler* expressly identifies the medical record access scenario described in paragraphs 0225-0234 as a different business application of its 2-Party ABDS system, as opposed to the 3-Party ABDS implementation that is proposed for the “eBusiness Transaction Using Financial Institution Account” business application described in paragraph 0299. And, the medical record access scenario described in paragraphs 0225-0234 makes no mention of any such use of cookies or any other automatic populating of medical records.

As is well known in the art, medical records are special types of data records due to the particularly personal and sensitive nature of the information they contain and the restrictive access to such information to only certain authorized users, such as a patient’s physician. While *Wheeler* proposes using cookies for automatically filling in fields of a web site’s ordering form for assisting a purchaser in ordering a product or service in its eBusiness transaction scenario, *Wheeler* provides no hint whatsoever of automatically populating data fields of a patient’s medical record in such medical record access scenario mentioned by *Wheeler*. Further, it is unclear how, if at all, cookies (which are populated with information based on a user’s browsing

history) may be employed for populating data fields of a patient's medical record in the scenario proposed by *Wheeler*.

In the Examiner interview conducted November 12, 2009, the Examiner noted that paragraph 0225 of *Wheeler* addresses medical records. However, as noted above, the discussion of the medical records in paragraphs 0225-0234 of *Wheeler* describes a completely separate and distinct business application from the eBusiness transaction described in paragraph 0299. The discussion of medical records in the embodiment described in paragraphs 0225-0234 of *Wheeler* does not describe any technique for automatically populating any data field of a medical record by contacting a data source in accordance with a received schedule, but instead describes an embodiment for application of its ABDS system for secure access by a patient to the patient's medical records.

Again, paragraphs 0225-0234 of *Wheeler* do not propose any use of cookies (as in the eBusiness transaction scenario that *Wheeler* describes in its paragraph 0299), nor do paragraphs 0225-0234 propose any other technique for automatically populating field(s) of a medical record. In the exemplary scenario of paragraphs 0225-0234 in which *Wheeler* applies its ABDS for a patient to access medical records, *Wheeler* describes that the patient may manually modify the medical records, and does not propose any automatic populating of any fields of the patient's medical records, and certainly not any such automatic population by contacting a patient in accordance with a schedule.

In addition, claim 1 expressly recites "automatically populating at least one of the one or more data fields [of the computer-based medical record] with desired field data from a data source". There is simply no suggestion regarding how browsing history or user preference information contained in the cookies referenced in *Wheeler* for an eBusiness Transaction may be employed for automatically populating a field of patient's medical record with desired data from a data source. *Puchek* is not relied upon as teaching or suggesting automatic population of any field of a medical record, nor does it do so. Thus, the applied combination fails to teach or suggest this limitation of claim 1.

Receiving a schedule and contacting the data source in accordance with the schedule

Additionally, claim 1 recites that the automatically populating comprises receiving a schedule for contacting the data source to prompt the data source for the desired field data, and triggering contact of the data source in accordance with the schedule. The Office Action relies upon *Puchek* as providing such a schedule for contacting a data source. However, *Puchek* does not teach automatically populating at least one field of a medical record with desired field data from a data source, and thus *Puchek* does not teach any such automatically populating that comprises receiving a schedule and triggering contact of the data source in accordance with the schedule, as recited by claim 1.

Puchek is directed generally to a monitoring and communication system for monitoring a supervised person, *see abstract of Puchek*. An automated phone call routine contacts a supervised person according to a contact plan, plays recorded messages or inquiries to the person, and records responses of the person. If a response is not received or if the responses do not fall within compliance guidelines, the contact plan is forwarded to personnel for follow-up contact or other assistance. While *Puchek* contacts a supervised person and records responses from the person, *Puchek* does not teach or suggest automatically populating any field of a computer-based medical record. *Puchek* does not appear to address medical records at all.

In addition, *Puchek* does not teach or suggest automatically populating a field of a computer-based medical record by: triggering by the computer-based application contacting of a data source in possession of desired field data in accordance with the schedule. Again, while *Puchek* contacts a supervised person and records responses from the person, *Puchek* does not teach or suggest automatically populating any field of a medical record with a response received from the person.

Conclusion for Claim 1

The Office Action relies on *Puchek* as supplying a schedule for contacting a supervised person, and appears to conclude that one of ordinary skill in the art would somehow combine such a contact schedule with the cookies used in *Wheeler* (that are proposed by *Wheeler* for use in an eBusiness Transaction) to somehow result in automatically populating a medical record, as opposed to the manual medical record populating technique expressly proposed by *Ross*. Appellant disagrees.

Not only is the cookie-based technique of *Wheeler* not used in *Wheeler*'s medical record access scenario, but there is also simply no teaching or suggestion regarding how the use of *Puchek*'s schedule for contacting supervised persons could possibly be used in the cookie-based automatic populating of fields proposed by *Wheeler*. The contacting of supervised persons according to a schedule proposed by *Puchek* and the use of cookies for updating of fields of a web page proposed by *Wheeler* appear to be completely disparate concepts that are not used together in any way. Indeed, *Puchek* is concerned with contacting supervised persons for responses, whereas *Wheeler* employs a technique that uses cookies for populating fields of a web page (instead of contacting supervised persons for such field data). Further, neither the contact schedule of *Puchek* nor the cookie-based update technique of *Wheeler* are described as being used for automatically updating a medical record.

In view of the above, the rejection of claim 1 should be overturned. Further, claims 4-8, 11-13, and 39 each depends either directly or indirectly from claim 1, and thus the rejection of these claims should likewise be overturned based at least on their dependency from claim 1 for the above reasons.

Dependent Claim 2

Dependent claim 2 depends from independent claim 1 and thus inherits all limitations of claim 1. Therefore, dependent claim 2 is believed allowable over the applied references based at least on its dependency from claim 1 for the reasons presented above.

Dependent claim 2 further recites “updating, by said computer-based application, the computer-based medical record to include the received desired field data”. The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest this further limitation of claim 2. The Office Action appears to contend that *Ross* discloses this limitation, *see* page 3 of the Office Action. However, *Ross* does not disclose that a computer-based application updates a computer-based medical record to include field data that is received from the data source that is contacted in accordance with the schedule (according to the limitations recited in claim 1 from which claim 2 depends). Instead, *Ross* merely proposes manual entry by medical personnel of data into the medical records.

Also, as discussed above, *Wheeler* and *Puchek* also fail to teach or suggest any such updating of computer-based medical records by a computer-based application. For instance, as discussed above with claim 1, *Wheeler*’s use of cookies in a web form are not taught or suggested as being used for updating medical records in any way.

Thus, the further limitation of claim 2 is not taught or suggested by the applied combination, and therefore the rejection of claim 2 should be overturned for this further reason.

Dependent Claim 9

Dependent claim 9 depends from independent claim 1 and thus inherits all limitations of claim 1. Therefore, dependent claim 9 is believed allowable over the applied references based at least on its dependency from claim 1 for the reasons presented above.

Dependent claim 9 further recites “wherein contacting a data source includes: transmitting an email to the data source”. The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest this further limitation of claim 9. The Office Action appears to contend that *Wheeler* discloses this limitation, citing to Figure 57 and paragraph 0259 of *Wheeler*, see page 5 of the Office Action. However, the Office Action is inconsistent in its treatment of the limitations of claims 1 and 9 concerning contacting a data source. First, in its treatment of claim 1, the Office Action appears to rely upon *Puchek* as disclosing contacting a data source in accordance with a schedule. Now, in its treatment of claim 9, the Office Action relies upon *Wheeler* as disclosing contacting the data source via email.

Further, the cited portion of *Wheeler* on which the Office Action relies describes the disparate business application of applying *Wheeler*’s ABDS system to an Internet Service Provider (described in its paragraphs 0256-0263), and does not teach or suggest contacting a data source “to prompt said data source for the desired field data for said at least one data field” of a computer-based medical record (as recited in claim 1 from which claim 9 depends). Neither *Ross* nor *Puchek* are asserted by the Office Action as disclosing this limitation of claim 9, nor do they appear to do so.

Thus, the further limitation of claim 9 is not taught or suggested by the applied combination, and therefore the rejection of claim 9 should be overturned for this further reason.

Dependent Claim 10

Dependent claim 10 depends from claim 9, which depends from independent claim 1, and thus claim 10 inherits all limitations of claims 1 and 9. Therefore, dependent claim 10 is believed allowable over the applied references based at least on its dependency from claims 1 and 9 for the reasons presented above.

Dependent claim 10 further recites “wherein contacting a data source includes: providing the data source with text-based instructions concerning the desired field data.” The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest this further limitation of claim 10.

The Office Action appears to contend that *Ross* discloses this limitation, *see* page 5 of the Office Action. However, the Office Action is inconsistent in its treatment of the limitations of claims 1, 9, and 10 concerning contacting a data source. First, in its treatment of claim 1, the Office Action appears to rely upon *Puchek* as disclosing contacting a data source in accordance with a schedule. Then, in its treatment of claim 9, the Office Action relies upon *Wheeler* as disclosing contacting a data source via email. Now, in its treatment of claim 10, the Office Action relies upon *Ross* as disclosing providing the data source with text-based instructions. In this regard, the Office Action is internally inconsistent as to its application of the references concerning contacting the data source.

Ross does not disclose contacting of a data source in accordance with a schedule, and thus *Ross* does not disclose that such contacting of the data source includes providing the data source with text-based instructions. Neither *Wheeler* nor *Puchek* are asserted by the Office Action as disclosing this limitation of claim 10, nor do they appear to do so.

Thus, the rejection of claim 10 should be overturned for this further reason.

Independent Claim 14 and Dependent Claims 15-19 and 40

Independent claim 14 recites:

A data entry method comprising:
 in a computer-based medical record including a plurality of data fields,
 defining one or more data fields for which desired field data is to be acquired,
 wherein the medical record defines at least a portion of the medical history of a
 patient; and
 automatically populating at least one of the one or more data fields with
desired field data from the patient, said automatically populating comprising:
 receiving, by a computer-based application that is stored to a
 computer-readable medium and executing on a processor-based computer, a
 schedule for contacting said patient to prompt said patient for the desired field
 data for said at least one data field;
 triggering, by said computer-based application, telephonically
contacting the patient;
 receiving, by said computer-based application, the desired field
 data from the patient; and
 updating, by said computer-based application, the computer-based
medical record to include the received desired field data. (Emphasis added).

For reasons similar to those discussed above with claim 1, the applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest at least the above-emphasized limitations of claim 14. That is, the applied combination does not teach or suggest at least:

- Automatically populating at least one data field of a computer-based medical record (indeed, *Ross* expressly teaches a user manually populating fields of a medical record).
- Receiving by a computer-based application a schedule for contacting a patient, triggering by the computer-based application telephonically contacting of the patient, and updating by the computer-based application the computer-based medical record to include field data received from the patient.

The Office Action relies on *Puchek* as supplying a schedule for contacting a supervised person, and appears to conclude that one of ordinary skill in the art would somehow combine such a contact schedule with the cookies used in *Wheeler* (that are proposed by *Wheeler* for use in an eBusiness Transaction) to somehow result in automatically populating a medical record, as

opposed to the manual medical record populating technique expressly proposed by *Ross*. Appellant disagrees.

Not only is the cookie-based technique of *Wheeler* not used in *Wheeler*'s medical record access scenario (as discussed in detail above for claim 1), but there is also simply no teaching or suggestion regarding how the use of *Puchek*'s schedule for contacting supervised persons could possibly be used in the cookie-based automatic populating of fields proposed by *Wheeler*. The contacting of supervised persons according to a schedule proposed by *Puchek* and the use of cookies for updating of fields of a web page proposed by *Wheeler* appear to be completely disparate concepts that are not used together in any way. Indeed, *Puchek* is concerned with contacting supervised persons for responses, whereas *Wheeler* employs a technique that uses cookies for populating fields of a web page (instead of contacting supervised persons for such field data). Further, neither the contact schedule of *Puchek* nor the cookie-based update technique of *Wheeler* are described as being used for automatically updating a medical record.

In view of the above, the rejection of claim 14 should be overturned. Further, claims 14-19 and 40 each depends either directly or indirectly from claim 14, and thus the rejection of these claims should likewise be overturned based at least on their dependency from claim 14 for the above reasons.

Independent Claim 20 and Dependent Claims 24-27 and 30-32

Independent claim 20 recites:

A computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:

in a computer-based medical record including a plurality of data fields, define one or more data fields for which desired field data is to be acquired, wherein the medical record defines at least a portion of the medical history of a patient;

schedule one or more times for contacting a data source to prompt said data source for the desired field data for said at least one data field; contact, in accordance with the schedule, said data source in possession of the desired field data; and receive the desired field data from the data source. (Emphasis added).

The Office Action merely contends that claim 20 is rejected for the same reasons given for claims 1-19 and 39 (*see* page 9 of the Office Action). However, as discussed above, the rejection of claims 1-19 and 39 are improper. Thus, a *prima facie* case of obviousness has not been established for claim 20.

Further, for reasons similar to those discussed above with claim 1, the applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest at least the above-emphasized limitations of claim 20. That is, the applied combination does not teach or suggest a computer program that when executed by a processor causes the processor to:

- Schedule one or more times for contacting a data source to prompt said data source for the desired field data for at least one data field of a computer-based medical record.
- Contacting the data source in accordance with the schedule and receiving the desired field data from the data source.

In view of the above, the rejection of claim 20 should be overturned. Further, claims 24-27, and 30-32 each depends either directly or indirectly from claim 20, and thus the rejection of these claims should likewise be overturned based at least on their dependency from claim 20 for the above reasons.

Dependent Claim 21

Dependent claim 21 depends from independent claim 20 and thus inherits all limitations of claim 20. Therefore, dependent claim 21 is believed allowable over the applied references based at least on its dependency from claim 20 for the reasons presented above.

Dependent claim 21 further recites “instructions for updating the computer-based data record to include the desired field data”. The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest this further limitation of claim 21. The Office Action appears to rely on its treatment of claim 2 in support of this rejection of claim 21 (*see* page 9 of the Office Action), and thus contends that *Ross* discloses this limitation, *see* treatment of claim 2 on page 3 of the Office Action. However, *Ross* does not disclose a computer program that comprises instructions for updating a computer-based medical record to include field data that is received from the data source that is contacted in accordance with the schedule (according to the limitations recited in claim 20 from which claim 21 depends). Instead, *Ross* merely proposes manual entry by medical personnel of data into the medical records.

Also, as discussed above, *Wheeler* and *Puchek* also fail to teach or suggest any such updating of computer-based medical records by a computer program. For instance, as discussed above with claim 1, *Wheeler*’s use of cookies in a web form are not taught or suggested as being used for updating medical records in any way.

Thus, the further limitation of claim 21 is not taught or suggested by the applied combination, and therefore the rejection of claim 21 should be overturned for this further reason.

Dependent Claim 28

Dependent claim 28 depends from independent claim 20 and thus inherits all limitations of claim 20. Therefore, dependent claim 28 is believed allowable over the applied references based at least on its dependency from claim 20 for the reasons presented above.

Dependent claim 28 further recites “wherein the instructions for contacting a data source include instructions for: transmitting an email to the data source”. The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest this further limitation of claim 28. The

Office Action appears to rely on its treatment of claim 9 in support of this rejection of claim 28 (*see* page 9 of the Office Action), and thus contends that *Wheeler* discloses this limitation, *see* treatment of claim 9 on page 5 of the Office Action (citing to Figure 57 and paragraph 0259 of *Wheeler*). However, the Office Action is inconsistent in its treatment of the limitations of claims 20 and 28 (as it was in its treatment of claims 1 and 9) concerning contacting a data source. First, in its treatment of claim 1 (for which the Office Action appears to rely in rejecting claim 20), the Office Action appears to rely upon *Puchek* as disclosing contacting a data source in accordance with a schedule. Then, in its treatment of claim 9 (for which the Office Action appears to rely in rejecting claim 28), the Office Action relies upon *Wheeler* as disclosing contacting the data source via email.

Further, the cited portion of *Wheeler* on which the Office Action relies describes the disparate business application of applying *Wheeler*'s ABDS system to an Internet Service Provider (described in its paragraphs 0256-0263), and does not teach or suggest contacting a data source "to prompt said data source for the desired field data for said at least one data field" of a computer-based medical record (as recited in claim 20 from which claim 28 depends). Neither *Ross* nor *Puchek* are asserted by the Office Action as disclosing this limitation of claim 28, nor do they appear to do so.

Thus, the further limitation of claim 28 is not taught or suggested by the applied combination, and therefore the rejection of claim 9 should be overturned for this further reason.

Dependent Claim 29

Dependent claim 29 depends from claim 28, which depends from independent claim 20, and thus claim 29 inherits all limitations of claims 20 and 28. Therefore, dependent claim 29 is believed allowable over the applied references based at least on its dependency from claims 20 and 28 for the reasons presented above.

Dependent claim 29 further recites "wherein the instructions for contacting a data source further include instructions for: providing the data source with text-based instructions concerning the desired field data." The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest this further limitation of claim 29.

The Office Action appears to rely on its treatment of claim 10 in support of this rejection of claim 29 (*see* page 9 of the Office Action), and thus contends that *Ross* discloses this limitation, *see* treatment of claim 10 on page 5 of the Office Action. However, the Office Action is inconsistent in its treatment of the limitations of claims 1, 9, and 10 (and is thus likewise inconsistent in its treatment of claims 20, 28, and 29) concerning contacting a data source. First, in its treatment of claim 1 (which the Office Action appears to reference for its rejection of claim 20), the Office Action appears to rely upon *Puchek* as disclosing contacting a data source in accordance with a schedule. Then, in its treatment of claim 9 (which the Office Action appears to reference for its rejection of claim 28), the Office Action relies upon *Wheeler* as disclosing contacting a data source via email. In its treatment of claim 10 (which the Office Action appears to reference for its rejection of claim 29), the Office Action relies upon *Ross* as disclosing providing the data source with text-based instructions. In this regard, the Office Action is internally inconsistent as to its application of the references concerning contacting the data source.

Ross does not disclose contacting of a data source in accordance with a schedule, and thus *Ross* does not disclose that such contacting of the data source includes providing the data source with text-based instructions. Neither *Wheeler* nor *Puchek* are asserted by the Office Action as disclosing this limitation of claim 29, nor do they appear to do so.

Thus, the rejection of claim 29 should be overturned for this further reason.

Independent Claim 33 and Dependent Claims 34-38 and 41

Independent claim 33 recites:

A computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:

in a computer-based medical record including a plurality of data fields, define one or more data fields for which desired field data is to be acquired, wherein the medical record defines at least a portion of the medical history of a patient;

in accordance with a defined contact schedule, autonomously telephonically contact the patient for requesting the desired field data from the patient;

receive the desired field data from the patient;

update the computer-based medical record to include the desired field data. (Emphasis added).

For reasons similar to those discussed above with claim 1, the applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest at least the above-emphasized limitations of claim 33. That is, the applied combination does not teach or suggest at least:

The Office Action relies on *Puchek* as supplying a schedule for contacting a supervised person, and appears to conclude that one of ordinary skill in the art would somehow combine such a contact schedule with the cookies used in *Wheeler* (that are proposed by *Wheeler* for use in an eBusiness Transaction) to somehow result in a computer program that updates a computer-based medical record to include data received from the contacted patient, as opposed to the manual medical record populating technique expressly proposed by *Ross*. Appellant disagrees.

Not only is the cookie-based technique of *Wheeler* not used in *Wheeler*'s medical record access scenario (as discussed in detail above for claim 1), but there is also simply no teaching or suggestion regarding how the use of *Puchek*'s schedule for contacting supervised persons could possibly be used in the cookie-based automatic populating of fields proposed by *Wheeler*. The contacting of supervised persons according to a schedule proposed by *Puchek* and the use of cookies for updating of fields of a web page proposed by *Wheeler* appear to be completely disparate concepts that are not used together in any way. Indeed, *Puchek* is concerned with contacting supervised persons for responses, whereas *Wheeler* employs a technique that uses

cookies for populating fields of a web page (instead of contacting supervised persons for such field data). Further, neither the contact schedule of *Puchek* nor the cookie-based update technique of *Wheeler* are described as being used for automatically updating a medical record.


In view of the above, the rejection of claim 33 should be overturned. Further, claims 34-38 and 41 each depends either directly or indirectly from claim 33, and thus the rejection of these claims should likewise be overturned based at least on their dependency from claim 33 for the above reasons.

Conclusion

In view of the above, Appellant requests that the board overturn the outstanding rejections of claims 1, 2, 4-21, and 24-41. Attached hereto are a Claims Appendix, Evidence Appendix, and Related Proceedings Appendix. As noted in the attached Evidence Appendix, no evidence is submitted herewith. Also, as noted in Section II of this appeal brief, there are no related appeals are identified in Section II above, and thus as noted by the Related Proceedings Appendix, no decisions in any such related proceedings are provided.

Dated: January 5, 2010

Respectfully submitted,

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VIII. CLAIMS APPENDIX

Claims Involved in the Appeal of Application Serial No. 10/824,705

1. A data entry method comprising:
in a computer-based medical record including a plurality of data fields, defining one or more data fields for which desired field data is to be acquired; and
automatically populating at least one of the one or more data fields with desired field data from a data source, said automatically populating comprising:
receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer, a schedule for contacting said data source to prompt said data source for the desired field data for said at least one data field;
triggering, by said computer-based application, contacting said data source in possession of the desired field data in accordance with said schedule; and
receiving, by said computer-based application, the desired field data from the data source.
2. The method of claim 1 further comprising updating, by said computer-based application, the computer-based medical record to include the received desired field data.
3. (Canceled)
4. The method of claim 1 wherein the data source is a patient and the medical record defines at least a portion of the medical history of the patient.
5. The method of claim 1 wherein contacting a data source includes:
authenticating the data source.

6. The method of claim 5 wherein authenticating the data source includes: requiring that the data source enter an electronic password; and receiving the electronic password.
7. The method of claim 5 wherein authenticating the data source includes: requiring that the data source speak a verbal password; and receiving the verbal password.
8. The method of claim 5 wherein authenticating the data source includes: requiring that the data source provide an authenticating digital certificate; and receiving the authenticating digital certificate.
9. The method of claim 1 wherein contacting a data source includes: transmitting an email to the data source.
10. The method of claim 9 wherein contacting a data source further includes: providing the data source with text-based instructions concerning the desired field data.
11. The method of claim 1 wherein contacting a data source includes: telephonically contacting the data source.
12. The method of claim 11 wherein contacting a data source includes: providing the data source with speech-based instructions concerning the desired field data.
13. The method of claim 1 wherein the desired field data concerns a numeric range-based variable that can accept any numeric value within a range of valid numeric values.

14. A data entry method comprising:
in a computer-based medical record including a plurality of data fields, defining one or more data fields for which desired field data is to be acquired, wherein the medical record defines at least a portion of the medical history of a patient; and
automatically populating at least one of the one or more data fields with desired field data from the patient, said automatically populating comprising:
receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer, a schedule for contacting said patient to prompt said patient for the desired field data for said at least one data field;
triggering, by said computer-based application, telephonically contacting the patient;
receiving, by said computer-based application, the desired field data from the patient; and
updating, by said computer-based application, the computer-based medical record to include the received desired field data.
15. The method of claim 14 wherein telephonically contacting the patient includes: authenticating the patient.
16. The method of claim 15 wherein authenticating the patient includes:
requiring that the patient enter an electronic password; and
receiving the electronic password.
17. The method of claim 15 wherein authenticating the patient includes:
requiring that the patient speak a verbal password; and
receiving the verbal password.
18. The method of claim 14 wherein telephonically contacting the patient includes: providing the patient with speech-based instructions concerning the desired field data.

19. The method of claim 14 wherein the desired field data concerns a numeric range-based variable that can accept any numeric value within a range of valid numeric values.
20. A computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:
 - in a computer-based medical record including a plurality of data fields, define one or more data fields for which desired field data is to be acquired, wherein the medical record defines at least a portion of the medical history of a patient;
 - schedule one or more times for contacting a data source to prompt said data source for the desired field data for said at least one data field;
 - contact, in accordance with the schedule, said data source in possession of the desired field data; and
 - receive the desired field data from the data source.
21. The computer program product of claim 20 further comprising instructions for updating the computer-based data record to include the desired field data.
22. (Canceled)
23. (Canceled)
24. The computer program product of claim 20 wherein the instructions for contacting a data source include instructions for:
 - authenticating the data source.
25. The computer program product of claim 24 wherein the instructions for authenticating the data source include instructions for:
 - requiring that the data source enter an electronic password; and
 - receiving the electronic password.

26. The computer program product of claim 24 wherein the instructions for authenticating the data source include instructions for:
requiring that the data source speak a verbal password; and
receiving the verbal password.
27. The computer program product of claim 24 wherein the instructions for authenticating the data source include instructions for:
requiring that the data source provide an authenticating digital certificate; and
receiving the authenticating digital certificate.
28. The computer program product of claim 20 wherein the instructions for contacting a data source include instructions for:
transmitting an email to the data source.
29. The computer program product of claim 28 wherein the instructions for contacting a data source further include instructions for:
providing the data source with text-based instructions concerning the desired field data.
30. The computer program product of claim 20 wherein the instructions for contacting a data source include instructions for:
telephonically contacting the data source.
31. The computer program product of claim 30 wherein the instructions for contacting a data source include instructions for:
providing the data source with speech-based instructions concerning the desired field data.
32. The computer program product of claim 20 wherein the desired field data concerns a numeric range-based variable that can accept any numeric value within a range of valid numeric values.

33. A computer program product residing on a computer readable medium having a plurality of instructions stored thereon which, when executed by the processor, cause that processor to:
- in a computer-based medical record including a plurality of data fields, define one or more data fields for which desired field data is to be acquired, wherein the medical record defines at least a portion of the medical history of a patient;
 - in accordance with a defined contact schedule, autonomously telephonically contact the patient for requesting the desired field data from the patient;
 - receive the desired field data from the patient;
 - update the computer-based medical record to include the desired field data.
34. The computer program product of claim 33 wherein the instructions for telephonically contacting the patient include instructions for:
- authenticating the patient.
35. The computer program product of claim 34 wherein the instructions for authenticating the patient include instructions for:
- requiring that the patient enter an electronic password; and
 - receiving the electronic password.
36. The computer program product of claim 34 wherein the instructions for authenticating the patient include instructions for:
- requiring that the patient speak a verbal password; and
 - receiving the verbal password.
37. The computer program product of claim 33 wherein the instructions for telephonically contacting the patient include instructions for:
- providing the patient with speech-based instructions concerning the desired field data.

38. The computer program product of claim 33 wherein the desired field data concerns a numeric range-based variable that can accept any numeric value within a range of valid numeric values.
39. The method of claim 1 further comprising:
receiving, by the computer-based application, selection of said at least one data field for which said data source is to be contacted in accordance with said schedule to prompt said data source for the desired field data.
40. The method of claim 14 further comprising:
receiving, by the computer-based application, selection of said at least one data field for which said patient is to be contacted in accordance with said schedule to prompt said patient for the desired field data.
41. The computer program product of claim 33 further comprising instructions for receiving selection of at least one of the one or more data fields for which said patient is to be contacted in accordance with defined contact schedule for requesting corresponding desired field data from the patient.

IX. EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

X. RELATED PROCEEDINGS APPENDIX

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.